

HOWARD LOVELL

JULY 19, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1362]

The Committee on the Judiciary, to whom was referred the bill (S. 1362) for the relief of Howard Lovell, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The facts will be found fully set forth in Senate Report No. 375, Eighty-second Congress, first session, which is appended hereto and made a part of this report. Your committee concur in the recommendation of the Senate.

[S. Rept. No. 375, 82d Cong., 1st sess.]

The purpose of the proposed legislation, as amended, is to pay to Howard Lovell, of Florence, Colo., the sum of \$5,000, in full satisfaction of his claim against the United States for compensation for injuries sustained by him as the result of an accident involving an Army truck, while he was fighting a forest fire at Camp Carson, Colo., on January 17, 1950.

STATEMENT

A similar bill, S. 4110, was reported favorably to the Senate from the committee on December 11, 1950.

On January 17, 1950, a forest fire was observed about 2 miles northwest of Camp Carson, Colo. The personnel on the military reservation, both military and civilian, were alerted when it appeared that the fire threatened the reservation. Despite all efforts made by the troops and other personnel on duty at Camp Carson, the wind and weather were such that the fire could not be controlled. The military authorities at Camp Carson thereupon requested the fire department of the city of Florence, Colo., to assist in fighting the fire. Howard Lovell, a member of the city council of Florence and a member of the fire and police committee of that city, accompanied the Florence Fire Department, with all of its available equipment, to Camp Carson to oversee and direct the operation of said fire department in fighting the forest fire. The Florence Fire Department was assigned to a certain area on the military reservation. When the fire in that

area had been stopped, Mr. Lovell set out to find Bordon C. Cameron, the fire chief of Camp Carson, to obtain further orders.

He was given a ride in a ¼-ton Army truck by three soldiers. He found the Camp Carson fire chief and received a new assignment for the Florence Fire Department. He then started to return to his organization in the Army truck by way of B Street. In the meantime, however, the forest fire had reached B Street and had burned the bridge across a ditch. A strong wind was blowing, smoke was very thick, and the soldier operating the truck in which Mr. Lovell was riding was unable to see that the bridge had burned down, and the truck dropped into the ditch, resulting in the serious injury of Mr. Lovell. By reason of his injury Mr. Lovell was hospitalized in the Camp Carson Station Hospital for a period of 32 days.

A résumé of his injuries and treatment are contained in the letter of the Department of the Army to the Attorney General, dated September 15, 1950, which is hereto attached.

"Mr. Lovell was 51 years of age at the time of his injury, and was the owner and operator of a tourist court, from which he was earning approximately \$250 per month. The Department is not informed as to whether he received any salary as a member of the City Council of Florence, Colo. Mr. Lovell has estimated his loss of earnings as a result of his injury on January 17, 1950, at \$330. His wife, Mrs. Phyllis A. Lovell, 41 years of age, and his daughter, Nora Irene Lovell, 11 years of age, are wholly dependent upon him for their support, and his mother-in-law, 72 years of age, is partially dependent upon him. Following his injury all medical treatment and hospitalization were furnished to Mr. Lovell at Camp Carson without charge. The claims officer who investigated this accident has advised that after Mr. Lovell's release from the hospital he made 46 trips for physiotherapy treatments at an estimated total expense of \$188.60.

"Inasmuch as the military authorities at Camp Carson, Colo., had requested the Florence Fire Department to assist in fighting a forest fire which threatened the destruction of the camp, and as Mr. Lovell was actively engaged in directing the operations of said fire department at the time of his injury, it is the view of the Department of the Army that he should be compensated by the United States in a reasonable amount for the damages sustained by him on account of his injury. Considering the age, occupation, and earnings of the claimant at the time of his injury, the serious nature of the injuries sustained by him, which have resulted in a considerable degree of permanent disability, the pain and suffering which he has undergone, the loss of earnings sustained and the expenses incurred by reason of his injury, and the number of persons dependent upon him, it is the view of the Department of the Army that the proposed award of \$5,000 provided in S. 4110 is fair and reasonable."

The Department of Justice concurs in the recommendation of the Department of the Army.

It will be noted that S. 1362 was introduced in the Eighty-second Congress in the sum of \$10,000, while S. 4110 of the Eighty-first Congress was introduced in the sum of \$5,000. No additional evidence has been submitted as to why the sum of \$10,000 is a more just or reasonable sum than the sum of \$5,000, which was approved by the committee in the Eighty-first Congress. For this reason the committee is constrained to approve the same amount as it approved in the Eighty-first Congress and recommends that S. 1362, as amended, be considered favorably.

Attached hereto and made a part of this report is the letter from the Department of the Army to the Attorney General, dated September 15, 1950, and the letter from the Department of Justice to Hon. Pat McCarran, dated November 8, 1950.

DEPARTMENT OF THE ARMY,
Washington, September 15, 1950.

The honorable the ATTORNEY GENERAL,
Washington, D. C.

DEAR MR. ATTORNEY GENERAL: Reference is made to your letter with which you enclosed a copy of S. 4110, Eighty-first Congress, a bill for the relief of Howard Lovell. You state that the Senate Committee on the Judiciary has requested the Department of Justice to submit a report on this bill and has advised that if reports are necessary from other sources they will be secured by your Department and submitted along with your report to the committee. You, therefore, request the comments of the Department of the Army on S. 4110.

This bill provides as follows: "That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Howard Lovell, of Florence, Colo., the sum of \$5,000, in full satisfaction of his claim against the United States for compensation for injuries sustained by him while fighting a forest fire at Camp Carson, Colo., on January 17, 1950, as the result of an accident involving an Army truck, he having no remedy under the Federal Tort Claims Act, as amended."

On January 17, 1950, a forest fire was observed about 2 miles northwest of Camp Carson, Colo. The personnel on the military reservation, both military and civilian, were alerted when it appeared that the fire threatened the reservation. Despite all efforts made by the troops and other personnel on duty at Camp Carson, the wind and weather were such that the fire could not be controlled. The military authorities at Camp Carson thereupon requested the fire department of the city of Florence, Colo., to assist in fighting the fire. Howard Lovell, a member of the city council of Florence and a member of the fire and police committee of that city, accompanied the Florence Fire Department, with all of its available equipment, to Camp Carson to oversee and direct the operations of said fire department in fighting the forest fire. The Florence Fire Department was assigned to a certain area on the military reservation. When the fire in that area had been stopped, Mr. Lovell set out to find Gordon C. Cameron, the fire chief of Camp Carson, to obtain further orders. He was given a ride in a 1/4-ton Army truck by three soldiers. He found the Camp Carson fire chief and received a new assignment for the Florence Fire Department. He then started to return to his organization in the Army truck by way of B street. In the meantime, however, the forest fire had reached B Street and had burned the bridge across a ditch. A strong wind was blowing, smoke was very thick, and the soldier operating the truck in which Mr. Lovell was riding was unable to see that the bridge had burned down, and the truck dropped into the ditch, resulting in the serious injury of Mr. Lovell. By reason of his injury, Mr. Lovell was hospitalized in the Camp Carson station hospital for a period of 32 days.

On June 1, 1950, Capt. Ralph E. Brown, Jr., Medical Corps, United States Army, chief of surgical service, station hospital, Camp Carson, submitting the following report concerning the injuries sustained in this accident by Mr. Lovell and the treatment thereof:

"He was treated for the following injuries: (1) Burns, severe, first and second degree, all surfaces, right hand; (2) wound, lacerated, severe, involving skin and subcutaneous tissues mesial aspect junction of middle and upper one-third thigh, left; (3) fracture, simple, severe, complete, transverse, carpal scaphoid, left; (4) fracture, simple, severe, complete, transverse, styloid process of radius, left; (6) fracture, simple, severe, incomplete, transverse, head of radius, left; (7) fracture, simple, severe, incomplete, oblique (chip) medial epicondyle humerus, left; for which he received the following treatment: Immobilization of multiple fractures of left upper extremity in plaster of paris extending from carpal bones to midportion of upper arm and debridement and secondary closure of wound of thigh. He was hospitalized on the Surgical Service from January 17, 1950, until February 18, 1950, a period of 32 days. Since his discharge from the hospital he has been seen at periodical intervals as to the progress of his injuries.

"Examination today reveals the following residual disability: 30° limitation of motion of dorsi-flexion of the left wrist; 45° limitation of motion of flexion of the left wrist; 15° limitation of extension of the left elbow; 30° limitation of motion of flexion of the left elbow; 45° limitation of motion of abduction of the left shoulder; 30° limitation of motion of full extension of the left shoulder. X-ray examination reveals complete union of the multiple fracture of the left upper extremity. He has received, and will continue to receive, physiotherapy to regain as much function as possible.

"It is felt that Mr. Lovell has progressed as well as could be expected from the injuries which he received and that his present disability, while limiting his activities to some extent, is not such that would render him totally disabled from gainful occupation."

Mr. Lovell was 51 years of age at the time of his injury, and was the owner and operator of a tourist court, from which he was earning approximately \$250 per month. The Department is not informed as to whether he received any salary as a member of the city council of Florence, Colo. Mr. Lovell has estimated his loss of earnings as a result of his injury on January 17, 1950, at \$330. His wife, Mrs. Phyllis A. Lovell, 41 years of age, and his daughter, Nora Irene Lovell, 11 years of age, are wholly dependent upon him for their support, and his mother-in-law, 72 years of age, is partially dependent upon him. Following his injury

all medical treatment and hospitalization were furnished to Mr. Lovell at Camp Carson without charge. The claims officer who investigated this accident has advised that after Mr. Lovell's release from the hospital he made 46 trips for physiotherapy treatments at an estimated total expense of \$188.60.

Inasmuch as the military authorities at Camp Carson, Colo., had requested the Florence Fire Department to assist in fighting a forest fire which threatened the destruction of the camp, and as Mr. Lovell was actively engaged in directing the operations of said fire department at the time of his injury, it is the view of the Department of the Army that he should be compensated by the United States in a reasonable amount for the damages sustained by him on account of his injury. Considering the age, occupation, and earnings of the claimant at the time of his injury, the serious nature of the injuries sustained by him, which have resulted in a considerable degree of permanent disability, the pain and suffering which he has undergone, the loss of earnings sustained and the expenses incurred by reason of his injury, and the number of persons dependent upon him, it is the view of the Department of the Army that the proposed award of \$5,000 provided in S. 4110 is fair and reasonable.

The Federal Tort Claims Act (60 Stat. 843; 28 U. S. C. 931) as revised and codified by the act of June 25, 1948 (62 Stat. 933; 28 U. S. C. 1346 (b)), and as amended by the act of April 25, 1949 (Public Law 55, 81st Cong.), confers jurisdiction upon the United States district courts to hear and determine claims against the United States "for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury * * * caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment." The truck in which Mr. Lovell was riding at the time of the accident on January 17, 1950, was at such time being operated in a lawful and proper manner. This claimant, therefore, has no remedy under the Federal Tort Claims Act, as amended, for the reason that his injury was not caused by any "negligent or wrongful act or omission" on the part of any officer, agent, or employee of the United States, a condition precedent to the bringing of a claim under the terms of that statute. There is no other statute under which the claimant may recover damages from the United States on account of his injury. There is, therefore, no method by which he may be compensated for the damages sustained by him except through the enactment by the Congress of a private relief bill such as S. 4110.

A bill similar in principle, S. 404, Eighty-first Congress, for the relief of Emma L. Jackson, has been enacted, and it was approved by the President on June 15, 1950, becoming Private Law 495, Eighty-first Congress. In that case a fire broke out at Fort Benjamin Harrison, Ind., on May 31, 1945. The fire-fighting equipment at Fort Benjamin Harrison was inadequate to gain control of the fire and the military authorities at that station called upon the Indianapolis Fire Department to assist in fighting the fire. Mrs. Jackson's husband, Everett L. Jackson, a member of the Indianapolis Fire Department, while fighting the fire was overcome by heat and smoke and died a few minutes thereafter. The Congress by S. 404 appropriated the sum of \$5,000 for the relief of Mrs. Jackson on account of the death of her husband.

In the light of the foregoing facts the Department of the Army has no objection to the enactment of S. 4110.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army.

DEPARTMENT OF JUSTICE,
Washington, November 8, 1950.

HON. PAT McCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for the views of the Department of Justice relative to the bill (S. 4110) for the relief of Howard Lovell.

The bill would provide for payment of the sum of \$5,000 to Howard Lovell, of Florence, Colo., in full satisfaction of his claim against the United States for compensation for injuries sustained by him while fighting a forest fire at Camp Carson, Colo.

In compliance with your request, a report was obtained from the Department of the Army concerning this legislation. According to that report, which is en-

closed, it appears that on January 17, 1950, a forest fire was observed about 2 miles northwest of Camp Carson, Colo. Despite the efforts made by the troops and other personnel on duty at Camp Carson, the wind and weather was such that the fire could not be controlled. The military authorities thereupon requested the Fire Department of the City of Florence, Colo., to assist in fighting the fire. Claimant, a member of the City Council of Florence and of the fire and police committee of that city, accompanied the fire department to Camp Carson to supervise its operations in fighting the forest fire. In the course of such operations he was given a ride in an Army truck by three soldiers. Because of thick smoke the driver of the truck was unable to observe that a bridge had burned down and consequently the truck dropped into a ditch which the bridge had spanned. Claimant suffered serious injuries from which he has not completely recovered.

At the time of the accident claimant was 51 years of age and was the owner and operator of a tourist camp from which he was earning approximately \$250 per month. He has estimated his loss of earnings as a result of his injury at \$330. His wife and minor daughter are wholly dependent upon him for support and his mother-in-law is partially dependent upon him. Following his injury all medical treatment and hospitalization were furnished to him at Camp Carson without charge. After his release from the hospital he incurred total expenses of \$188.60 for physiotherapy treatments.

The Department of the Army states that inasmuch as the military authorities at Camp Carson had requested the Florence Fire Department to assist in fighting the fire and as claimant was actively engaged in directing the operations of the fire department at the time of his injury, it is the view of the Department of the Army that he should be compensated in a reasonable amount for the damages sustained by him. It further states that considering his age, occupation, and earnings at the time of his injury, the degree of permanent disability which he has sustained, the pain and suffering he has undergone, the loss of earnings sustained and the expenses incurred by reason of his injury, and the number of persons dependent upon him for support, it believes that the proposed award of \$5,000 is fair and reasonable. The report directs attention to the fact that the Federal Tort Claims Act authorizes suit against the Government for injuries or losses caused by the negligent or wrongful act or omission of any Government employee while acting within the scope of his office or employment. Inasmuch as the truck in which he was riding at the time of the accident was being operated in a lawful and proper manner, he has no remedy under the act. The report also directs attention to a similar bill introduced for the relief of a widow whose husband lost his life fighting a fire at Fort Benjamin Harrison, as a member of the Indianapolis Fire Department. This bill was enacted and became Private Law 495, Eighty-first Congress. The report concludes with the statement that in the light of the foregoing facts, the Department of the Army has no objection to enactment of the bill.

The Department of Justice concurs in the views of the Department of the Army.

The Director of the Bureau of the Budget has advised this office that there would be no objection to the submission of this report.

Yours sincerely,

PEYTON FORD,
Deputy Attorney General.

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